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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON**

JEREMY OLSEN,	)	
	)	
Plaintiff,	)	
	)	<b>ANSWER</b>
v.	)	
	)	
NORRIS COCHRAN, in his official	)	Case No. 2:20-cv-374 (SMJ)
capacity as Acting Secretary of	)	
Health and Human Services,	)	
	)	
Defendant.	)	
	)	

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**INTRODUCTION**

The Defendant, Norris Cochran,<sup>1</sup> Acting Secretary of Health and Human Services (the “Secretary”), respectfully answers the allegations of the Corrected Complaint, ECF No. 3-1, as follows. The Secretary notes that, pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court’s review in this action is based solely on the

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<sup>1</sup> Acting Secretary Cochran is automatically substituted as Defendant by operation of Federal Rule of Civil Procedure 25(d).

1 administrative record, rather than the allegations of the parties in their respective  
2 pleadings.

3 1. This paragraph consists of Plaintiff's legal conclusions and  
4 characterization of this lawsuit, to which no response is required.

5 2. This paragraph consists of Plaintiff's legal conclusions regarding  
6 subject-matter jurisdiction, to which no response is required.

7 3. This paragraph consists of Plaintiff's legal conclusions regarding  
8 venue, to which no response is required.

9 4. Admitted.

10 5. Admitted that Alex M. Azar II was the Secretary of Health and  
11 Human Services when the Corrected Complaint was filed. The remainder of this  
12 paragraph consists of Plaintiff's characterization of this lawsuit, to which no  
13 response is required.

14 6. This paragraph consists of factual allegations regarding diabetes.  
15 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based  
16 solely on the administrative record, rather than the allegations of the parties in their  
17 respective pleadings; Defendant thus respectfully refers the Court to the  
18 administrative record for a full and accurate statement of its contents. To the  
19 extent that these allegations are not reflected in the administrative record, they are  
20 beyond the scope of the Court's review in this case, and no response is required.

1           7.     This paragraph consists of factual allegations regarding diabetes.  
2 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based  
3 solely on the administrative record, rather than the allegations of the parties in their  
4 respective pleadings; Defendant thus respectfully refers the Court to the  
5 administrative record for a full and accurate statement of its contents. To the  
6 extent that these allegations are not reflected in the administrative record, they are  
7 beyond the scope of the Court's review in this case, and no response is required.

8           8.     This paragraph consists of factual allegations regarding diabetes.  
9 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based  
10 solely on the administrative record, rather than the allegations of the parties in their  
11 respective pleadings; Defendant thus respectfully refers the Court to the  
12 administrative record for a full and accurate statement of its contents. To the  
13 extent that these allegations are not reflected in the administrative record, they are  
14 beyond the scope of the Court's review in this case, and no response is required.

15           9.     This paragraph consists of factual allegations regarding diabetes.  
16 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based  
17 solely on the administrative record, rather than the allegations of the parties in their  
18 respective pleadings; Defendant thus respectfully refers the Court to the  
19 administrative record for a full and accurate statement of its contents. To the

1 extent that these allegations are not reflected in the administrative record, they are  
2 beyond the scope of the Court's review in this case, and no response is required.

3 10. This paragraph consists of factual allegations regarding diabetes.  
4 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based  
5 solely on the administrative record, rather than the allegations of the parties in their  
6 respective pleadings; Defendant thus respectfully refers the Court to the  
7 administrative record for a full and accurate statement of its contents. To the  
8 extent that these allegations are not reflected in the administrative record, they are  
9 beyond the scope of the Court's review in this case, and no response is required.

10 11. This paragraph consists of factual allegations regarding diabetes.  
11 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based  
12 solely on the administrative record, rather than the allegations of the parties in their  
13 respective pleadings; Defendant thus respectfully refers the Court to the  
14 administrative record for a full and accurate statement of its contents. To the  
15 extent that these allegations are not reflected in the administrative record, they are  
16 beyond the scope of the Court's review in this case, and no response is required.

17 12. This paragraph consists of factual allegations regarding glucose tests.  
18 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based  
19 solely on the administrative record, rather than the allegations of the parties in their  
20 respective pleadings; Defendant thus respectfully refers the Court to the

1 administrative record for a full and accurate statement of its contents. To the  
2 extent that these allegations are not reflected in the administrative record, they are  
3 beyond the scope of the Court's review in this case, and no response is required.

4 13. This paragraph consists of factual allegations regarding glucose tests.  
5 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based  
6 solely on the administrative record, rather than the allegations of the parties in their  
7 respective pleadings; Defendant thus respectfully refers the Court to the  
8 administrative record for a full and accurate statement of its contents. To the  
9 extent that these allegations are not reflected in the administrative record, they are  
10 beyond the scope of the Court's review in this case, and no response is required.

11 14. This paragraph consists of factual allegations regarding continuous  
12 glucose monitors. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in  
13 this action is based solely on the administrative record, rather than the allegations  
14 of the parties in their respective pleadings; Defendant thus respectfully refers the  
15 Court to the administrative record for a full and accurate statement of its contents.  
16 To the extent that these allegations are not reflected in the administrative record,  
17 they are beyond the scope of the Court's review in this case, and no response is  
18 required.

19 15. This paragraph consists of factual allegations regarding continuous  
20 glucose monitors. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in

1 this action is based solely on the administrative record, rather than the allegations  
2 of the parties in their respective pleadings; Defendant thus respectfully refers the  
3 Court to the administrative record for a full and accurate statement of its contents.  
4 To the extent that these allegations are not reflected in the administrative record,  
5 they are beyond the scope of the Court's review in this case, and no response is  
6 required.

7       16. This paragraph consists of a factual allegation regarding continuous  
8 glucose monitors. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in  
9 this action is based solely on the administrative record, rather than the allegations  
10 of the parties in their respective pleadings; Defendant thus respectfully refers the  
11 Court to the administrative record for a full and accurate statement of its contents.  
12 To the extent that this allegation is not reflected in the administrative record, it is  
13 beyond the scope of the Court's review in this case, and no response is required.

14       17. This paragraph consists of factual allegations regarding continuous  
15 glucose monitors. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in  
16 this action is based solely on the administrative record, rather than the allegations  
17 of the parties in their respective pleadings; Defendant thus respectfully refers the  
18 Court to the administrative record for a full and accurate statement of its contents.  
19 To the extent that these allegations are not reflected in the administrative record,

1 they are beyond the scope of the Court's review in this case, and no response is  
2 required.

3 18. This paragraph consists of factual allegations regarding continuous  
4 glucose monitors. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in  
5 this action is based solely on the administrative record, rather than the allegations  
6 of the parties in their respective pleadings; Defendant thus respectfully refers the  
7 Court to the administrative record for a full and accurate statement of its contents.  
8 To the extent that these allegations are not reflected in the administrative record,  
9 they are beyond the scope of the Court's review in this case, and no response is  
10 required.

11 19. This paragraph consists of factual allegations regarding continuous  
12 glucose monitors. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in  
13 this action is based solely on the administrative record, rather than the allegations  
14 of the parties in their respective pleadings; Defendant thus respectfully refers the  
15 Court to the administrative record for a full and accurate statement of its contents.  
16 To the extent that these allegations are not reflected in the administrative record,  
17 they are beyond the scope of the Court's review in this case, and no response is  
18 required.

19 20. This paragraph consists of factual allegations regarding continuous  
20 glucose monitors. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in

1 this action is based solely on the administrative record, rather than the allegations  
2 of the parties in their respective pleadings; Defendant thus respectfully refers the  
3 Court to the administrative record for a full and accurate statement of its contents.  
4 To the extent that these allegations are not reflected in the administrative record,  
5 they are beyond the scope of the Court's review in this case, and no response is  
6 required.

7       21. This paragraph consists of factual allegations regarding continuous  
8 glucose monitors. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in  
9 this action is based solely on the administrative record, rather than the allegations  
10 of the parties in their respective pleadings; Defendant thus respectfully refers the  
11 Court to the administrative record for a full and accurate statement of its contents.  
12 To the extent that these allegations are not reflected in the administrative record,  
13 they are beyond the scope of the Court's review in this case, and no response is  
14 required.

15       22. This paragraph consists of factual allegations regarding continuous  
16 glucose monitors. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in  
17 this action is based solely on the administrative record, rather than the allegations  
18 of the parties in their respective pleadings; Defendant thus respectfully refers the  
19 Court to the administrative record for a full and accurate statement of its contents.  
20 To the extent that these allegations are not reflected in the administrative record,



1 they are beyond the scope of the Court's review in this case, and no response is  
2 required.

3       23. This paragraph consists of factual allegations regarding continuous  
4 glucose monitors. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in  
5 this action is based solely on the administrative record, rather than the allegations  
6 of the parties in their respective pleadings; Defendant thus respectfully refers the  
7 Court to the administrative record for a full and accurate statement of its contents.  
8 To the extent that these allegations are not reflected in the administrative record,  
9 they are beyond the scope of the Court's review in this case, and no response is  
10 required.

11       24. This paragraph consists of plaintiff's characterizations and legal  
12 conclusions regarding the treatment of continuous glucose monitors under  
13 Medicare Part B, to which no response is required.

14       25. This paragraph consists of plaintiff's characterizations and legal  
15 conclusions regarding Medicare Part B, to which no response is required. The  
16 Court is respectfully referred to the cited statutory provision for a full and complete  
17 statement of its contents.

18       26. This paragraph consists of plaintiff's characterizations and legal  
19 conclusions regarding the Secretary's regulations, to which no response is

1 required. The Court is respectfully referred to the cited regulatory provision for a  
2 full and complete statement of its contents.

3 27. This paragraph consists of a block quotation of a statutory provision,  
4 to which no response is required. The Court is respectfully referred to the cited  
5 statutory provision for a full and complete statement of its contents.

6 28. This paragraph consists of plaintiff's characterizations and legal  
7 conclusions regarding a statutory provision, to which no response is required. The  
8 Court is respectfully referred to the cited statutory provision for a full and complete  
9 statement of its contents.

10 29. Defendant admits that CMS Ruling 1682-R was issued on January 12,  
11 2017. The remainder of this paragraph consists of plaintiff's characterizations and  
12 legal conclusions regarding CMS Ruling 1682-R, to which no response is required.  
13 The Court is respectfully referred to the cited CMS Ruling for a full and complete  
14 statement of its contents.

15 30. This paragraph consists of plaintiff's quotation from CMS Ruling  
16 1682-R, to which no response is required. The Court is respectfully referred to the  
17 cited CMS Ruling for a full and complete statement of its contents.

18 31. This paragraph consists of plaintiff's characterizations and legal  
19 conclusions regarding CMS Ruling 1682-R, to which no response is required. The

1 Court is respectfully referred to the cited CMS Ruling for a full and complete  
2 statement of its contents.

3 32. This paragraph consists of plaintiff's characterizations and legal  
4 conclusions regarding CMS Ruling 1682-R, to which no response is required. The  
5 Court is respectfully referred to the cited CMS Ruling for a full and complete  
6 statement of its contents.

7 33. This paragraph consists of plaintiff's characterizations and legal  
8 conclusions regarding CMS Ruling 1682-R, to which no response is required. The  
9 Court is respectfully referred to the cited CMS Ruling for a full and complete  
10 statement of its contents.

11 34. This paragraph consists of plaintiff's characterizations and legal  
12 conclusions regarding the treatment of continuous glucose monitors under  
13 Medicare Part B, to which no response is required.

14 35. This paragraph consists of plaintiff's characterizations and legal  
15 conclusions regarding CMS Ruling 1682-R, to which no response is required. The  
16 Court is respectfully referred to the cited CMS Ruling for a full and complete  
17 statement of its contents.

18 36. This paragraph consists of plaintiff's characterizations and legal  
19 conclusions regarding LCD L33822 and Policy Article A52464, to which no

1 response is required. The Court is respectfully referred to the cited local coverage  
2 determination and policy article for a full and complete statement of their contents.

3 37. This paragraph consists of plaintiff's characterizations and legal  
4 conclusions regarding CMS Ruling 1682-R, to which no response is required. The  
5 Court is respectfully referred to the cited CMS Ruling for a full and complete  
6 statement of its contents.

7 38. This paragraph consists of plaintiff's characterizations and legal  
8 conclusions regarding National Coverage Determination 280.1, among other  
9 things. No response is required. The Court is respectfully referred to the cited  
10 national coverage determination for a full and complete statement of its contents.

11 39. This paragraph consists of plaintiff's characterizations and legal  
12 conclusions regarding Local Coverage Determination L33822 and Policy Article  
13 A52464, among other things. No response is required. The Court is respectfully  
14 referred to the cited local coverage determination and policy article for a full and  
15 complete statement of their contents.

16 40. Admitted that several district courts have reviewed Medicare Part B  
17 coverage determinations for continuous glucose monitors.

18 41. This paragraph consists of plaintiff's characterizations and legal  
19 conclusions regarding several district court decisions, to which no response is

1 required. The Court is respectfully referred to those district court decisions for a  
2 full and complete statement of their contents.

3 42. This paragraph consists of plaintiff's characterizations and legal  
4 conclusions regarding several district court decisions, to which no response is  
5 required. The Court is respectfully referred to those district court decisions for a  
6 full and complete statement of their contents.

7 43. This paragraph consists of plaintiff's characterizations and legal  
8 conclusions regarding the district court's decision in *Whitcomb v. Azar*, to which  
9 no response is required. The Court is respectfully referred to that decision for a  
10 full and complete statement of its contents.

11 44. This paragraph consists of plaintiff's characterizations and legal  
12 conclusions regarding several district court decisions, to which no response is  
13 required. The Court is respectfully referred to those district court decisions for a  
14 full and complete statement of their contents.

15 45. This paragraph consists of plaintiff's characterizations and legal  
16 conclusions regarding a decision of the Departmental Appeals Board, to which no  
17 response is required. The Court is respectfully referred to the cited decision for a  
18 full and complete statement of its contents.

19 46. This paragraph consists of factual allegations regarding Plaintiff.  
20 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based

1 solely on the administrative record, rather than the allegations of the parties in their  
2 respective pleadings; Defendant thus respectfully refers the Court to the  
3 administrative record for a full and accurate statement of its contents. To the  
4 extent that these allegations are not reflected in the administrative record, they are  
5 beyond the scope of the Court's review in this case, and no response is required.

6       47. This paragraph consists of factual allegations regarding Plaintiff.  
7 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based  
8 solely on the administrative record, rather than the allegations of the parties in their  
9 respective pleadings; Defendant thus respectfully refers the Court to the  
10 administrative record for a full and accurate statement of its contents. To the  
11 extent that these allegations are not reflected in the administrative record, they are  
12 beyond the scope of the Court's review in this case, and no response is required.

13       48. This paragraph consists of factual allegations regarding Plaintiff.  
14 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based  
15 solely on the administrative record, rather than the allegations of the parties in their  
16 respective pleadings; Defendant thus respectfully refers the Court to the  
17 administrative record for a full and accurate statement of its contents. To the  
18 extent that these allegations are not reflected in the administrative record, they are  
19 beyond the scope of the Court's review in this case, and no response is required.

1           49. This paragraph consists of factual allegations regarding Plaintiff.  
2 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based  
3 solely on the administrative record, rather than the allegations of the parties in their  
4 respective pleadings; Defendant thus respectfully refers the Court to the  
5 administrative record for a full and accurate statement of its contents. To the  
6 extent that these allegations are not reflected in the administrative record, they are  
7 beyond the scope of the Court's review in this case, and no response is required.

8           50. This paragraph consists of factual allegations regarding Plaintiff.  
9 Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in this action is based  
10 solely on the administrative record, rather than the allegations of the parties in their  
11 respective pleadings; Defendant thus respectfully refers the Court to the  
12 administrative record for a full and accurate statement of its contents. To the  
13 extent that these allegations are not reflected in the administrative record, they are  
14 beyond the scope of the Court's review in this case, and no response is required.

15           51. This paragraph consists of factual allegations regarding Plaintiff and  
16 his continuous glucose monitor. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the  
17 Court's review in this action is based solely on the administrative record, rather  
18 than the allegations of the parties in their respective pleadings; Defendant thus  
19 respectfully refers the Court to the administrative record for a full and accurate  
20 statement of its contents. To the extent that these allegations are not reflected in

1 the administrative record, they are beyond the scope of the Court's review in this  
2 case, and no response is required.

3 52. This paragraph consists of allegations regarding the coverage claim at  
4 issue in this case. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in  
5 this action is based solely on the administrative record, rather than the allegations  
6 of the parties in their respective pleadings; Defendant thus respectfully refers the  
7 Court to the administrative record for a full and accurate statement of its contents.  
8 To the extent that these allegations are not reflected in the administrative record,  
9 they are beyond the scope of the Court's review in this case, and no response is  
10 required.

11 53. This paragraph consists of allegations regarding the coverage claim at  
12 issue in this case. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in  
13 this action is based solely on the administrative record, rather than the allegations  
14 of the parties in their respective pleadings; Defendant thus respectfully refers the  
15 Court to the administrative record for a full and accurate statement of its contents.  
16 To the extent that these allegations are not reflected in the administrative record,  
17 they are beyond the scope of the Court's review in this case, and no response is  
18 required.

19 54. Admitted that Plaintiff's claims for coverage were initially denied on  
20 the listed date, and that he sought redetermination. The remainder of this



1 paragraph consists of Plaintiff's characterization of those initial denials, to which  
2 no response is required. The Court is respectfully referred to the administrative  
3 record for a full and accurate statement of their contents.

4 55. Admitted that Plaintiff's claims were denied on redetermination, on  
5 the listed date, and that he sought reconsideration. The remainder of this paragraph  
6 consists of Plaintiff's characterization of those redetermination decisions, to which  
7 no response is required. The Court is respectfully referred to the administrative  
8 record for a full and accurate statement of their contents.

9 56. Admitted that Plaintiff's claims were denied on reconsideration, on  
10 the listed date, and that he sought review by an administrative law judge. The  
11 remainder of this paragraph consists of Plaintiff's characterization of those  
12 reconsideration decisions, to which no response is required. The Court is  
13 respectfully referred to the administrative record for a full and accurate statement  
14 of their contents.

15 57. Admitted that the administrative law judge conducted a hearing on the  
16 listed date and issued a decision on Plaintiff's claims. The remainder of this  
17 paragraph consists of Plaintiff's characterization of that ALJ decision, to which no  
18 response is required. The Court is respectfully referred to the administrative record  
19 for a full and accurate statement of its contents.

1           58. This paragraph consists of Plaintiff's characterization of filings before  
2 the Medicare Appeals Council, to which no response is required. The Court is  
3 respectfully referred to those filings for a full and complete statement of their  
4 contents.

5           59. Admitted that the Medicare Appeals Council issued a decision on  
6 Plaintiff's claims on the listed date. The remainder of this paragraph consists of  
7 Plaintiff's characterization of that decision, to which no response is required. The  
8 Court is respectfully referred to the administrative record for a full and accurate  
9 statement of its contents.

10          60. Admitted.

11          61. In this paragraph, Plaintiff repeats the paragraphs set forth above. The  
12 Secretary incorporates by reference his answers to all of the preceding paragraphs  
13 as if fully set out herein.

14          62. This paragraph consists of a request for relief, to which no response is  
15 required. To the extent that a response is deemed necessary, the Secretary denies  
16 that Plaintiff is entitled to the requested relief or any relief whatsoever. The  
17 Secretary notes that this claim was dismissed by the Court on January 12, 2021.

18          63. This paragraph consists of a request for relief, to which no response is  
19 required. To the extent that a response is deemed necessary, the Secretary denies

1 that Plaintiff is entitled to the requested relief or any relief whatsoever. The  
2 Secretary notes that this claim was dismissed by the Court on January 12, 2021.

3 64. In this paragraph, Plaintiff repeats the paragraphs set forth above. The  
4 Secretary incorporates by reference his answers to all of the preceding paragraphs  
5 as if fully set out herein.

6 65. This paragraph consists of a request for relief, to which no response is  
7 required. To the extent that a response is deemed necessary, the Secretary denies  
8 that Plaintiff is entitled to the requested relief or any relief whatsoever.

9 66. This paragraph consists of a request for relief, to which no response is  
10 required. To the extent that a response is deemed necessary, the Secretary denies  
11 that Plaintiff is entitled to the requested relief or any relief whatsoever.

12 67. In this paragraph, Plaintiff repeats the paragraphs set forth above. The  
13 Secretary incorporates by reference his answers to all of the preceding paragraphs  
14 as if fully set out herein.

15 68. This paragraph consists of a request for relief, to which no response is  
16 required. To the extent that a response is deemed necessary, the Secretary denies  
17 that Plaintiff is entitled to the requested relief or any relief whatsoever.

18 69. This paragraph consists of a request for relief, to which no response is  
19 required. To the extent that a response is deemed necessary, the Secretary denies  
20 that Plaintiff is entitled to the requested relief or any relief whatsoever.

1           70. In this paragraph, Plaintiff repeats the paragraphs set forth above. The  
2 Secretary incorporates by reference his answers to all of the preceding paragraphs  
3 as if fully set out herein.

4           71. This paragraph consists of a request for relief, to which no response is  
5 required. To the extent that a response is deemed necessary, the Secretary denies  
6 that Plaintiff is entitled to the requested relief or any relief whatsoever.

7           72. This paragraph consists of a request for relief, to which no response is  
8 required. To the extent that a response is deemed necessary, the Secretary denies  
9 that Plaintiff is entitled to the requested relief or any relief whatsoever.

10          73. In this paragraph, Plaintiff repeats the paragraphs set forth above. The  
11 Secretary incorporates by reference his answers to all of the preceding paragraphs  
12 as if fully set out herein.

13          74. This paragraph consists of a request for relief, to which no response is  
14 required. To the extent that a response is deemed necessary, the Secretary denies  
15 that Plaintiff is entitled to the requested relief or any relief whatsoever.

16          75. This paragraph consists of factual allegations regarding continuous  
17 glucose monitors. Pursuant to 42 U.S.C. § 1395ff(b)(1)(A), the Court's review in  
18 this action is based solely on the administrative record, rather than the allegations  
19 of the parties in their respective pleadings; Defendant thus respectfully refers the  
20 Court to the administrative record for a full and accurate statement of its contents.

1 To the extent that these allegations are not reflected in the administrative record,  
2 they are beyond the scope of the Court's review in this case, and no response is  
3 required.

4 76. This paragraph consists of a request for relief, to which no response is  
5 required. To the extent that a response is deemed necessary, the Secretary denies  
6 that Plaintiff is entitled to the requested relief or any relief whatsoever.

7 77. In this paragraph, Plaintiff repeats the paragraphs set forth above. The  
8 Secretary incorporates by reference his answers to all of the preceding paragraphs  
9 as if fully set out herein.

10 78. This paragraph consists of a request for relief, to which no response is  
11 required. To the extent that a response is deemed necessary, the Secretary denies  
12 that Plaintiff is entitled to the requested relief or any relief whatsoever.

13 79. This paragraph consists of a request for relief, to which no response is  
14 required. To the extent that a response is deemed necessary, the Secretary denies  
15 that Plaintiff is entitled to the requested relief or any relief whatsoever.

16 The remaining paragraphs of the complaint contain Plaintiff's requested  
17 relief, to which no response is required. To the extent that a response is deemed  
18 necessary, the Secretary denies that Plaintiff is entitled to the requested relief or  
19 any relief whatsoever.

1       The Secretary denies any and all allegations of the complaint not expressly  
2 admitted herein.

3                                   **DEFENSES**

4       1.     The Secretary's actions did not violate the Administrative Procedure  
5 Act, the Medicare statute, or any other statutory or regulatory provision.

6       2.     Counts IV and VI were waived when they were not raised in the  
7 administrative process.

Respectfully submitted,

BRIAN M. BOYNTON  
Acting Assistant Attorney General

MICHELLE BENNETT  
Assistant Director, Federal Programs Branch

/s/ James Bickford

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*Counsel for Defendant*

Date: January 26, 2021